

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 3, 2016

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP2555

Cir. Ct. No. 2008CV270

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

KAREN STRANSKY AND ROBERT STRANSKY,

PLAINTIFFS-CROSS-RESPONDENTS,

V.

EVANSTON INSURANCE COMPANY AND ROCKWEILER SERVICES, LLC,

DEFENDANTS-CROSS-APPELLANTS.

CROSS-APPEAL¹ from a judgment of the circuit court for Juneau County: JOHN P. ROEMER, JR., Judge. *Affirmed.*

Before Higginbotham, Sherman and Blanchard, JJ.

¹ Karen and Robert Stransky's appeal was voluntarily dismissed, leaving before this court only Rockweiler's cross-appeal.

¶1 PER CURIAM. Rockweiler Services, LLC, and its insurer, Evanston Insurance Company, cross-appeal a money judgment in favor of Karen and Robert Stransky. The circuit court found that Rockweiler was negligent in its inspection of the electrical wiring of the Stranskys' home during the home's construction and that Rockweiler was liable for a portion of the Stranskys' damages resulting from the improperly installed wiring, which included the cost to entirely rewire the Stranskys' home. For the reasons discussed below, we affirm.

BACKGROUND

¶2 In 2006, the Stranskys entered into a contract with Countryside Log Homes, LLC, and Countryside Builders & Supply, LLC, (collectively, Countryside) for the construction of a home in Mauston, Wisconsin. Rockweiler was responsible for inspecting the home's electrical wiring and ensuring that the wiring comported with the National Electric Code (NEC) and the Uniform Development Code (UDC). After construction was completed on the home, it was discovered that the Stranskys' home was riddled with electrical code violations.

¶3 The Stranskys brought suit against Rockweiler, alleging in part that Rockweiler was negligent in its performance of the electrical inspection of their home. Following a multiday trial to the circuit court, the court found that Rockweiler was negligent in its inspection and that Rockweiler was partially liable for the total amount of damages suffered by the Stranskys as a result of the deficient wiring. The court found that Rockweiler owed the Stranskys a duty of care, which included the duty to "identify [electrical code] violations ... that a reasonably prudent ... inspector would have identified," but that Rockweiler had breached its duty by failing to identify certain "egregious and blatant" code violations.

¶4 Most important to the issues raised on appeal, the circuit court further found that, after identifying the egregious and blatant code violations, a “reasonably prudent building inspector,” “would have conducted further investigation into the wiring of other portions of the [Stranskys’] home to determine if the NEC violations were systemic,” and that if a “reasonable building inspector” had conducted further investigation, the inspector “would have” found additional violations meriting a halt to construction “and required [the builder] to rectify the NEC violations before proceeding with construction,” which Rockweiler had authority to do. This determination rested in part on the court’s finding that, once the full scope of electrical code violations in Stranskys’ home were revealed, the violations were shown to be systemic. The problem is that, by the time the full scope of the systemic violations was discovered, well after Rockweiler’s inspection, much of “the substandard wiring and the [wiring] violations [had become covered] with finish material,” that must be removed in order to fix the problems.

¶5 The court found that the Stranskys had suffered damages in the amount of \$121,500 related to the deficient wiring, which covered the cost of removing finish materials, rewiring the Stranskys’ home, and replacing the finish materials, and the court apportioned Rockweiler forty percent of the liability for those damages. Rockweiler cross-appeals. Additional facts are discussed below as necessary.

DISCUSSION

¶6 In this cross-appeal, Rockweiler does not challenge the circuit court’s decision to apportion to it the particular portion of the total damage awarded. Rather, Rockweiler challenges the decision to apportion any damages

whatsoever to Rockweiler arising from the complete rewiring of the home. As best we can tell, Rockweiler is arguing that the Stranskys failed to present evidence supporting an inference that connects Rockweiler's negligence in overlooking certain violations to "the need to gut and completely rewire the [Stranskys'] home," and therefore, the circuit court erred in finding that Rockweiler is liable for any percentage of the *total* damages suffered by the Stranskys, rather than being liable for just the repair of those violations that the evidence established Rockweiler should have identified at the time it conducted its inspection. We disagree and conclude that the circuit court made reasonable inferences from credible evidence in finding a causal connection between the negligence of Rockweiler in failing to identify particular violations that should have been evident to Rockweiler at the time of inspection and the systemic problem that ultimately required complete rewiring.

¶7 To establish a defendant's negligence, a plaintiff must establish the following four elements: (1) the existence of a duty of care on the part of the defendant; (2) a breach of that duty of care; (3) a causal connection between the defendant's breach of the duty of care and the plaintiff's injury; and (4) actual loss or damage resulting from the injury. *Behrendt v. Gulf Underwriters Ins. Co.*, 2009 WI 71, ¶14, 318 Wis. 2d 622, 768 N.W.2d 568. Rockweiler's argument concerns only the third element, "a causal connection between the defendant's breach of the duty of care and the plaintiff's injury." *Id.*, ¶94.

¶8 In Wisconsin, the test for determining causation is whether the negligent conduct at issue was a substantial factor in producing the plaintiff's injury. *Hicks v. Nunnery*, 2002 WI App 87, ¶34, 253 Wis. 2d 721, 643 N.W.2d 809. The phrase substantial factor means "that the defendant's conduct has such an effect in producing the harm as to lead the trier of fact, as a reasonable person,

to regard it as a cause” of the plaintiff’s injury. *Clark v. Leisure Vehicles, Inc.*, 96 Wis. 2d 607, 617-18, 292 N.W.2d 630 (1980). The question of causation is generally one of fact, and this court must sustain the fact finder’s finding “‘if there is any credible evidence under any reasonable view or any reasonable inferences derived therefrom that support [it].’” *Estate of Cavanaugh v. Andrade*, 202 Wis. 2d 290, 306, 550 N.W.2d 103 (1996) (quoted source omitted).

¶9 Rockweiler acknowledges that the Stranskys presented sufficient evidence in the form of expert testimony to establish that Rockweiler was negligent in failing to identify what Rockweiler describes as a “limited” number of code violations during its electrical inspection of the Stranskys’ home. We read Rockweiler’s brief as arguing, however, that the Stranskys failed to present evidence that Rockweiler’s failure to identify those defects was a substantial factor in the Stranskys’ need to entirely rewire their house.

¶10 Rockweiler’s argument begins with the following premise, which appears to be accepted by both sides: that the Stranskys’ experts did not testify that the specific violations that Rockweiler should have identified in its inspection represented, in themselves, sufficient defects to require a complete rewiring of the house.

¶11 Rockweiler’s challenge is to the following inferences drawn from the evidence by the circuit court: if Rockweiler had identified the violations that experts testified should have been identified, the reasonable next step for Rockweiler would have been to investigate further, and this investigation would have led to the discovery of the systemic problem, which would then have been addressed prior to the completion of the home’s construction. Rockweiler argues that in drawing these inferences, which supported the court’s ultimate finding that

Rockweiler's negligence was a substantial factor in the Stranskys' need to rewire their house, the court rested on mere speculation.²

¶12 A fatal defect in Rockweiler's argument is that it mischaracterizes the number and varieties of the violations that the evidence established Rockweiler was negligent in failing to identify during its inspection. Rockweiler argues that the evidence established that it overlooked only "limited" violations. This "limited" violations argument is based on the fact that the circuit court found, based on testimony from the Stranskys' expert witnesses, that Rockweiler should have identified the following eight types of NEC violations: overcut boxes; incorrect depth of boxes; ground wires not in conduit; missing junction boxes; wirings pulled diagonally and taught; and a missing GFCI outlet for a sink. It is true that the court found that each of these eight types of violations was overlooked, but Rockweiler ignores the fact that in some instances there were multiple violations of each of these types of violations. Furthermore, in addition to those eight types of violations, the circuit court found that expert testimony established that Rockweiler should have, but failed to, identify the following additional types of violations, of which there were also sometimes multiple violations: the sump pump was plugged into the wrong type of receptacle; Romex cable was used where conduit was needed; wires were not properly secured; a plate covering an outlet was not properly secured to the wall; a wall receptacle was

² To the extent that Rockweiler is also arguing that the court's finding was clearly erroneous because no evidence was presented that "a reasonable inspector 'sometime during the building of [the Stranskys'] home would have observed [the NEC violations]," Rockweiler's argument is conclusory and not developed. We, therefore, do not address the argument further. See *Associates Fin. Servs. Co. of Wis., Inc. v. Brown*, 2002 WI App 300, ¶4 n.3, 258 Wis. 2d 915, 656 N.W.2d 56 (generally, this court does not consider conclusory assertions and undeveloped arguments).

improperly used for a floor receptacle; wires were pinched between boards; a fixture was not secured to the ceiling; at the service panel, two wires were screwed into one wire; the ground wire at the electric meter was improperly installed; and an outside receptacle was not protected from the elements.

¶13 Based on the number and varieties of overlooked violations, we conclude that there was sufficient evidence to support the reasonable inference that had Rockweiler identified the violations during the electrical inspection, as a reasonable building inspector it would have conducted further investigation into the wiring, which would have led to the discovery, and correction, of other code violations in the Stranskys' wiring, which would have avoided the necessity of the Stranskys' having to rewire their home after construction had been completed. We now summarize the trial evidence supporting the circuit court's challenged findings.

¶14 The Stranskys offered the testimony of two experts—Scott Quist and Kent Fish. Quist, a master electrician, testified that he was asked by Fish to review photos of “the roughing of [the] electrical system” of Stranskys' home. Quist testified that from the photos, “[i]t was evident that the [rough] wiring ... [was] a mess, and there was a ton of [NEC] code violations,” including wires that were so tight that they posed fire hazards, and that he prepared a report listing the electrical code violations he observed in the photos. After reviewing the photos, Quist prepared a report wherein he stated that “the work performed on this project does not meet the [NEC] standard ... [that] [e]lectrical equipment shall be installed in a neat and workmanlike manner,” and that he “question[ed] the integrity of the entire installation and the potential for further electrical malfunctions.” Attached to the report was a list of approximately ninety-six

photos in which NEC violations were observed by Quist and the corresponding NEC violations.

¶15 Quist testified that after reviewing the rough-in photos, he conducted a personal inspection of the Stranskys' circuit panel and the exposed wiring in the Stranskys' home, and that at his request, a more thorough inspection of the home was conducted by Greg Fischer, which involved "taking devices apart, pulling switches off and actually looking at the box inside the wiring." Quist testified that after reviewing photos taken by Fischer during Fischer's inspection, he prepared a second report for the Stranskys wherein he identified additional electrical code violations that were found in the Stranskys' wiring. In that report, Quist identified seventeen types of NEC violations found in the wiring, and Quist attached to the report a list of forty-seven photographs of the Stranskys' wiring in which NEC violations could be seen and the corresponding NEC violations. Quist testified at trial regarding twenty-six of those photos, outlining the various NEC violations that he believed were evident, which included the use of improper receptacles and cabling, unsecured and unattached conduit, missing fixture boxes, and pinched and unprotected cabling.

¶16 Fish, who holds a masters degree in structural engineering and is an engineer with General Engineering Company, testified that he was hired by the Stranskys' to inspect their home following the home's construction. Fish testified that he was a former building inspector and that he has conducted numerous seminars for building inspectors. With regard to electrical inspections, Fish testified that an electrical inspector is typically a master electrician, meaning that "electrical items should [be] very high on [the inspector's] list of things to catch during ... construction." Fish testified that an electrical inspector has the duty "to make sure that the installed electrical meets the [UDC] and the [NEC]," and that

there are manuals and checklists available for electrical inspectors to “streamline[]” the inspection and to “help[] [the inspector] keep from missing anything.”

¶17 Fish testified that after he was hired by the Stranskys, he reviewed the photographs of the wiring at the roughing-in stage of construction. Fish testified that when reviewing those photographs, he observed NEC violations, including wires being pulled too tightly around corners, improper electrical boxes, improperly installed electrical boxes, devices installed without proper boxes, and an improperly installed service panel. Fish testified that after reviewing the photographs, he was “very concerned about the electrical [wiring] given the fact that some of the wiring methods [he] saw were not only substandard, but [] were ... safety hazards,” and that he contacted Quist, who is “more knowledgeable on electrical.” Fish testified that based on his review of the photographs taken during the rough-in stage of construction, the photographs taken by Fischer, the reports prepared by Quist, and Fish’s personal viewing of the wiring, it was his opinion that Rockweiler had, to a reasonable degree of certainty, breached its duty of care as an electrical inspector. Fish further testified that to bring the wiring up to code, the house would need to be rewired, which would necessitate removing the finish materials.

¶18 The testimony of Quist and Fish established that multiple NEC violations, which were readily apparent to individuals trained in the installation of residential electrical systems, were not identified by Rockweiler during its inspection. Both Quist and Fish testified that after reviewing photographs taken of the wiring at the rough-in stage (when Rockweiler conducted its inspection) and identifying the multiple NEC violations apparent in those photos, they believed that further investigation into the Stranskys’ wiring was required, which they did.

This further investigation revealed additional NEC violations that, combined with the previously identified violations, were so substantial that the Stranskys' house needed to be completely rewired.

¶19 Based on all of this testimony, which was found to be credible by the circuit court, we conclude that a circuit court could reasonably find, from the testimony of Quist and Fish that a reasonable electrical inspector would have identified “certain egregious, [] blatant, and [incipient] code violations,” and that a court could reasonably infer from the testimony that in light of those violations, a reasonable electrical inspector would have looked for additional violations and required that the violations be rectified before construction on the house continued. We conclude that the circuit court was not clearly erroneous in finding that Rockweiler's failure to do so was a substantial factor in the Stranskys' need for the removal of finish materials in the home, the complete rewiring of the home, and the replacement of all materials that were removed.

¶20 Accordingly, because the circuit court was not clearly erroneous in finding that Rockweiler's negligent inspection of the Stranskys' wiring was a substantial cause of the Stranskys' need for a global repair of their wiring, we affirm the court's judgment.

CONCLUSION

¶21 For the reasons discussed above, we affirm.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2013-14).

